

From Michigan Association of Home Builders

(2) AS USED IN SUBSECTION (1) "PUBLIC USE" DOES NOT INCLUDE THE TAKING OF PRIVATE PROPERTY FOR TRANSFER TO A PRIVATE ENTITY OR ENTITIES FOR EITHER OF THE FOLLOWING PURPOSES:

(A) ECONOMIC DEVELOPMENT,

(B) THE ENHANCEMENT OF TAX REVENUE.

(3) SUBSECTION (2) SHALL NOT BE DEEMED TO PRECLUDE THE TAKING OF PRIVATE PROPERTY FOR TRANSFER TO A PRIVATE ENTITY IF THE USE OF THE LAND IS INVESTED WITH PUBLIC ATTRIBUTES SUFFICIENT TO DEEM THE ENTITY OR ENTITIES' ACTIVITY GOVERNMENTAL, AND ONE OF THE FOLLOWING APPLIES:

(A) A PUBLIC NECESSITY OF THE EXTREME SORT REQUIRES COLLECTIVE ACTION TO ACQUIRE LAND FOR VITAL INSTRUMENTALITIES OF COMMERCE GENERATING PUBLIC BENEFITS WHOSE VERY EXISTENCE DEPENDS ON THE USE OF LAND THAT CAN BE ASSEMBLED ONLY BY THE COORDINATION CENTRAL GOVERNMENT ALONE IS CAPABLE OF ACHIEVING, OR

(B) IN CASE OF ECONOMIC DEVELOPMENT, THE USE OF THAT PROPERTY WILL REMAIN SUBJECT TO PUBLIC OVERSIGHT AND ACCOUNTABILITY AFTER THE TRANSFER OF THE PROPERTY AND WILL BE DEVOTED TO THE USE OF THE PUBLIC, INDEPENDENT OF THE WILL OF THE ENTITY OR ENTITIES TAKING IT, OR

(C) IF THE PROPERTY IS SELECTED BASED ON FACTS OF INDEPENDENT PUBLIC CONCERN, SIGNIFICANCE AND INTEREST WITHOUT REFERENCE TO THE PRIVATE INTERESTS OF THE ENTITY OR ENTITIES TO WHICH THE PROPERTY IS EVENTUALLY TRANSFERRED.

Comment: Page 28 Ryan Dissent. He identifies this as the "general principle" in the state taking clause for justifying the taking of private property for private corporations.

Comment: Page 233 Hathcock cites Ryan's "instrumentalities of commerce" exception to the taking of private property for private corporations. Instrumentalities of commerce are generally along the lines of railroads, canals and airports. .

Comment: Page 33 Hathcock, referencing Ryan's dissent. Establishes a very specific kind of need before this exception may be used.

Comment: Page 37 Hathcock refers to "public oversight" but Justice Ryan never used the phrase "oversight." He used the phrase "accountability." See page 25 and page 26 of the Ryan dissent "Continuing **Accountability** to the Public: A Condition for the Use of Public Power," setting forth the requirement for "...the retention of some measure of government control over the operation of the enterprise after it has passed into private hands." This is bolstered by page 34 of Hathcock where the Court found "...the transfer of condemned property to a private entity is consistent with the constitution's 'public use; requirement when the private entity **remains accountable to the public** (emphasis added) in its use of that property." This accountability standard is a consistent thread in Michigan eminent domain cases as cited by Ryan in his dissent while "oversight" seems to be the Court's translation of "accountability." Having both in will help limit the taking of private property for private entities ... [1]

Comment: Page 35 Hathcock quoting Ryan's dissent.

Comment: Pages 27, 28 Ryan dissent. Justice Ryan titles his third exception 'Choosing Land: Facts of Independent Public Significance.' He speaks of determinations based on criteria related to "the public interest." Page 36 of Hathcock refers to ... [2]

Comment: Pages 27 & 28 Ryan dissent.

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Pages 27, 28 Ryan dissent. Justice Ryan titles his third exception 'Choosing Land: Facts of Independent Public **Significance**.' He speaks of determinations based on criteria related to "the public **interest**." Page 36 of Hathcock refers to the selection of land based on "public **concern**." Thus the use of all three phrases even though they may overlap.